

REMARKS

Applicant submits that the present amendment is fully responsive to the Office Action dated January 29, 2008 and, thus, the application is in condition for allowance.

By this reply, claim 6 is amended. Claims 1-14 remain pending; claims 15-17 remain withdrawn at this time. Of these, claim 1, 6, 9 and 14 are independent. An expedited review and allowance of the application is respectfully requested.

In the outstanding Office Action, claim 6 was objected to because of a typo. The offending claim has been amended to correct the error.

In the outstanding Office Action, claims 9-13 were rejected under 35 U.S.C. § 101 because it is alleged that the claimed invention is directed to non-statutory subject matter. It is asserted that the language of the claims is directed to an abstract idea not tied to a technological art, environment or machine to produce a concrete, useful and tangible result. Applicant respectfully traverses.

Such amendment is not necessary as one having ordinary skill in the art would clearly understand that the claims of question relate to tangible matter having a useful result. Furthermore, each of the independent claims cited were not deemed as non-statutory in a prior Office Action, indicating the inventions recited therein were clear, useful and produced tangible results. Each cited claim is clearly statutory. For example, claim 1 recites a method of testing performance of a receiver through a number of discrete, useful and tangible steps. These steps include actions by various components at various sites. So it could hardly be argued that all of these steps are necessarily limited to a single program. Furthermore, testing a receiver is an important and useful diagnostic tool in the art and one of the important contributions of this invention, which is entitled "Receiver Test System." Attention is directed to the specification for

the usefulness of this invention. Claim 6 specifically and positively recites “a radio base station receiver test system” as an element of the claim. It is unclear how this is somehow not considered as statutory subject matter. This is a useful and tangible product performing a useful and tangible function resulting in a useful and tangible result. Claim 9 recites a “computer readable medium” having a receiver test application, which is a useful and tangible product. This is clearly a useful and tangible medium. It is unclear how this useful and clearly presented claim is somehow non-statutory subject matter. Thus, withdrawal of the rejection of these independent claims, and their corresponding dependent claims, is respectfully requested.

In the outstanding Office Action, claims 1-4, 6-12 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiukkonen (USPGPUB 2004/0203466) in view of Bringby (USPN 6,285,883). It is asserted that Kiukkonen discloses a test unit with all of the limitations of the present invention as recited in the claims, but for determining performance by evaluating bit-error rate, predetermined attenuation, and the received message power. It is alleged that Bringby does disclose this deficiency and the combination of these cited references would have therefore been obvious to one having ordinary skill in the art. Applicant respectfully traverses.

Neither Kiukkonen nor Bringby, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the pending claims. For example, Kiukkonen fails to disclose that the controller is programmable to transmit a predetermined test message. Bringby does not disclose testing of a receiver system as disclosed in the present application and recited in the pending claims.

In addition, even if Bringby discloses the limitations as alleged by the Examiner, *arguendo*, it would not have been obvious to one of ordinary skill in the art to combine the disclosures of Kiukkonen and Bringby to arrive at the invention as claimed because Kiukkonen

teaches away from such a combination. Kiukkonen discloses that it is advantageous not to generate a predetermined test message. See Kiukkonen, paragraph 11. However, as claimed in claim 15, the present invention discloses transmitting a predetermined message. Since Kiukkonen teaches away from transmitting a predetermined message, it would not have been obvious to one of ordinary skill in the art to combine the disclosures of Kiukkonen and Bringby to obtain the present invention.

In the outstanding Office Action, claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiukkonen in view of Bringby, and further in view of Ostman (USPN 6,529,494). It is asserted that the combination of Kiukkonen/Bringby discloses a method with all of the limitations of the present invention as recited in the claims, but for increasing the magnitude of the predetermined attenuation until the communication link is dropped. It is alleged that Ostman does disclose this deficiency and the combination of these cited references would have therefore been obvious to one having ordinary skill in the art. Applicant respectfully traverses.

Neither Kiukkonen nor Bringby nor Ostman, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the pending claims. Claim 5, which depends on claim 1 should be allowed for at least the same reasons set forth above.

In the outstanding Office Action, claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiukkonen in view of Bringby, and further in view of Laham (USPN 6,507,737). It is asserted that the combination of Kiukkonen/Bringby discloses a test unit with all of the limitations of the present invention as recited in the claims, but for evaluation medium routine medium resides in a MSC test unit. It is alleged that Laham does disclose this deficiency

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